IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5305 of 1999
With
SPECIAL CIVIL APPLICATION NO.8893 OF 1999

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVNABEN I SHAH

Versus

STATE OF GUJARAT

Appearance:
MR TRILOK J PATEL for Petitioner No. 1
MR BD KARIA for Respondent No. 4
MR VASANT S SHAH for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 23/12/2004

ORAL JUDGEMENT

1. Both the above matters are inter-connected and therefore they are heard together and decided by this common judgement.

2. The petitioners have challenged the order passed by the State Government dated 3rd July 1999 under section 155 of the Act.

3. The petitioner in Special Civil Application No.5305/99 is a member of the respondent no.4 society which is the petitioner in Special Civil Application No.8893/99. The petitioner was allotted Flat No.B-2 in respondent no.4 society. According to the petitioner, the respondent no.5 Harshadkumar Bhogilal Sanghvi had taken signature of the petitioner in blank paper and addressed a letter to the respondent no.4 society stating that he had purchased the flat No.B-2 from one Himmatlal Jethalal Shah, claiming as Power of Attorney of the petitioner herein. The petitioner therefore intimated the Chairman and Secretary of the respondent no.4 Society pointing out that the papers produced by respondent no.5 are concocted and the Block No.B-2 belongs to the petitioner. The petitioner also filed a criminal complaint against the respondent no.5.

4. The respondent no.5 had submitted an application to the District Registrar, Cooperative Society, Ahmedabad, under section 24 of the Act stating that the respondent no.4 society be directed to enrol him as member of the said society and the property be transferred to him. However, the petitioner was not joined as party to the said proceedings. The District Registrar rejected the said application by order dated 30th June 1998.

5. Against the decision of the District Registrar, the respondent no.5 preferred Revision Application No.36/98 before the Additional Registrar (Appeals), which also came to be rejected by order dated 8th October 1998.

6. The respondent no.5 thereafter filed Revision under section 155 of the Act before the respondent no.1 herein who allowed the said revision by order dated 3rd July 1999. It is against the said order the present petitions have been filed by Smt.Bhavnaben I.Shah and the Society.

7. The learned counsel for the petitioners submitted that the revisional authority has committed an error in entertaining the revision application against the concurrent findings of both the authorities viz. District Registrar and the and Additional Registrar (Appeals).

8. I have gone through the record of the case. The revisional authority has allowed the revision merely stating that the document of power of attorney is to be accepted till it is cancelled. The District Registrar while passing the order on 30th June 1998 has given cogent and convincing reasons at page 43 and recorded that the resignation was not given by the member in person and has also relied upon a decision of this Court to support the finding of the authority. Even the appellate authority has accepted the findings of fact recorded by the District Registrar and also found that the criminal case is pending. Apart from that even the proceedings were initiated behind the back of the petitioner in SCA No.5305/99. Therefore, in view of the concurrent findings recorded by the District Registrar and Additional Registrar (Appeals), the revisional authority was not justified in allowing the revision application and that too without reversing the reasons assigned by the lower authorities.

9. In the premises aforesaid, the present petitions are allowed. The order dated 3rd July 1999 passed by first respondent is quashed and set aside. Orders passed by the District Registrar and Additional Registrar (Appeals) are confirmed. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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